

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

TRANSCRIPT OF RECORD.

Court of Appeals, District of Columbia

APRIL TERM, 1901.

No. 1085.

83

No. 19, SPECIAL CALENDAR.

THOMAS BLAGDEN, APPELLANT,

vs.

**THE UNITED STATES OF AMERICA TO USE OF
R. PREINKERT, JOHN L. PREINKERT, INFANT
JOB BARNARD, THEIR GUARDIAN, AND CHARLES
I. PREINKERT, CLARA E. PREINKERT, INFANT
CHARLOTTE PREINKERT, THEIR GUARDIAN**

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA

FILED APRIL 15, 1901.

COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

APRIL TERM, 1901.

No. 1085.

No. 19, SPECIAL CALENDAR.

THOMAS BLAGDEN, APPELLANT,

vs.

THE UNITED STATES OF AMERICA TO USE OF EUGENE R. PREINKERT, JOHN L. PREINKERT, INFANTS, BY JOB BARNARD, THEIR GUARDIAN, AND CHARLOTTE I. PREINKERT, CLARA E. PREINKERT, INFANTS, BY CHARLOTTE PREINKERT, THEIR GUARDIAN.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

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2.

In the Court of Appeals of the District of Columbia.

THOMAS BLAGDEN, Appellant,
vs.
THE UNITED STATES OF AMERICA to Use of EUGENE R.
Preinkert *et al.* } No. 1085.

a Supreme Court of the District of Columbia.

THE UNITED STATES OF AMERICA for the
Use of Eugene R. Preinkert, John L. Prein-
kert, Infants, by Job Barnard, Their Guard-
ian, and Charlotte I. Preinkert, Clara E.
Preinkert, Infants, by Charlotte Preinkert,
Their Guardian, } No. 43551. At Law.
vs.
JOHN TAYLOR, THOMAS BLAGDEN, and GEORGE
W. White. }

UNITED STATES OF AMERICA, } ss :
District of Columbia, }

Be it remembered that in the supreme court of the District of Columbia, at the city of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had in the above-entitled cause, to wit:

1 *Declaration, &c.*

Filed December 19, 1899.

In the Supreme Court of the District of Columbia.

THE UNITED STATES OF AMERICA for the Use
of Eugene R. Preinkert, John L. Preinkert,
Infants, by Job Barnard, Their Guardian,
and Charlotte I. Preinkert, Clara E. Prein-
kert, Infants, by Charlotte Preinkert, Their
Guardian, Plaintiff, } At Law. No. 43551.
vs.
JOHN TAYLOR, THOMAS BLAGDEN, and GEORGE
W. White, Defendants. }

1.

The plaintiff, The United States of America, for the use of Eugene R. Preinkert and John L. Preinkert, infants, by Job Barnard, their guardian; Charlotte I. Preinkert and Clara E. Preinkert, infants,

by Charlotte Preinkert, their guardian, distributees of the estate of James Taylor, deceased, sue- the defendants, John Taylor, as principal, and Thomas Blagden and George W. White, as sureties, for money payable by the defendants to the plaintiff, for that the said defendants, on the 19th day of March, A. D. 1897, by their certain writing obligatory, sealed with their seals (a certified copy of which, under the hand and seal of the register of wills for the District of Columbia, is now here shown to the court), the date whereof is a certain

2 day and year above mentioned, to wit, the day and year aforesaid, acknowledged themselves to be held and firmly bound unto the plaintiff, The United States of America, in the full sum of fifteen thousand dollars (\$15,000), current money of said States; the condition of said writing obligatory was such that if the defendant John Taylor, executor of the last will and testament of James Taylor, deceased, late of the District of Columbia, should well and truly perform the said office of executor according to law and should in all respects discharge the duty of him required by law as executor aforesaid, without any injury or damage to any person interested in the faithful performance of the said office, then the said obligation should be void; it was otherwise to be in full force and virtue in law; and the plaintiff says that the said executor, the defendant John Taylor, did not perform the conditions of said writing obligatory, but therein wholly failed and made default, to the great damage and injury of the plaintiff, to wit, of the sum of fifteen thousand dollars (\$15,000); that, although under the orders of this court holding a special term for orphans' court business the said defendant, John Taylor, as such executor, exhibited and filed his second and final account in said court, which was duly approved and passed by said court holding said special term for orphans' court business on the 27th day of January, A. D. 1899, yet he, the said defendant, John Taylor, has wholly neglected and refused and still neglects and refuses to pay to the plaintiff, for the use of said infants, Eugene R. Preinkert, John L. Preinkert, Charlotte I. Preinkert, and Clara E. Preinkert, the several sums distributed to them by his said

3 account, to wit, the sum of four hundred and sixty-six dollars and ninety-nine cents (\$466.99) each, making the sum of eighteen hundred and sixty-seven dollars and ninety-six cents (\$1,867.96) in all, with interest from the said 27th day of January, A. D. 1899, by reason whereof the plaintiff has become entitled to have and receive from the said defendants, John Taylor, Thomas Blagden, and George W. White, the full sum of fifteen thousand dollars (\$15,000).

And the plaintiff claims the full sum of eighteen hundred and sixty-seven dollars and ninety-six cents (\$1,867.96), with interest, at the rate of six per centum per annum from the 27th day of January, A. D. 1899, less the sum of one hundred and fifty dollars and ninety cents (\$150.90), paid April 4th, 1899; the sum of one hundred dollars (\$100), paid June 13th, 1899, and the sum of thirty-six dollars (\$36), paid September 20th, 1899, besides the costs of this suit.

BARNARD & JOHNSON,
Attorneys for Plaintiff.

The defendants are to plead hereto on or before the twentieth day, exclusive of Sundays and legal holidays, occurring after the day of the service hereof; otherwise judgment.

BARNARD & JOHNSON,
Attorneys for Plaintiff.

4 Supreme Court of the District of Columbia.

TUESDAY, *February* 20, 1900.

The court resumes its session pursuant to adjournment, Mr. Justice Bradley presiding.

* * * * *

<p>THE UNITED STATES OF AMERICA for the Use of Eugene R. Preinkert, John L. Preinkert, Infants, by Job Barnard, Their Guardian, and Charlotte I. Preinkert, Clara E. Prein- kert, Infants, by Charlotte Preinkert, Guard- ian, Plaintiffs,</p> <p style="text-align: center;"><i>vs.</i></p> <p>JOHN TAYLOR, THOMAS BLAGDEN, and GEORGE W. White, Defendants.</p>	}	<p>At Law. No. 43551.</p>
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Now come here the plaintiffs, by their attorneys, Messrs. Barnard and Johnson, and pray judgment of their demand against the defendant John Taylor, who, though served with copies of the declaration, notice to plea, and summons the 19th day of December, 1899, hath not pleaded to the action. Therefore it is considered that the plaintiffs recover against said defendant eighteen hundred and sixty-seven dollars and ninety-six cents (\$1,867.96), with interest, at the rate of 6 % per annum, from January 27th, 1899, until paid, less the sum of one hundred and fifty dollars and ninety cents (\$150.90), paid April 4th, 1899; the sum of one hundred dollars (\$100), paid June 13th, 1899, being the money payable by him to the plaintiffs by reason of the premises, together with their costs of suit, to be taxed by the clerk, and have execution thereof.

Plea of Thomas Blagden.

Filed November 5, 1900.

In the Supreme Court of the District of Columbia.

THE UNITED STATES OF AMERICA, Use of
 Eugene R. Preinkert, John L. Preinkert,
 Infants, by Job Barnard, Their Guardian,
 and Charlotte Preinkert, Clara Preinkert,
 Infants, by Charlotte Preinkert, Their
 Guardian, Plaintiffs,

vs.

JOHN TAYLOR, THOMAS BLAGDEN, and GEORGE
 W. White, Defendants.

At Law. No. 43551,
 Doc. 47.

Plea of former judgment.

The said defendant, Thomas Blagden, says that after the last pleading in this action by said defendant and before this day the said plaintiff, on the 20th day of February, 1900, recovered judgment in the above-entitled action against the said defendant, John Taylor, for the sum of one thousand eight hundred and sixty-seven and $\frac{9}{10}$ dollars (\$1,867.96), with interest, at the rate of six % per annum, from January 27, 1899, until paid, and costs, less \$150.90, paid April 4, 1899; \$100, paid June 13, 1899, and \$36, paid September 20, 1899, for the same cause of action and upon the bond sued on, as by the record and proceedings thereof in the said court more fully and at large appear, and thereupon the said bond was extinguished and plaintiff's cause of action on said bond became, was, and is merged in said judgment, and thereby the plaintiff released and discharged this defendant from said claim, cause of action, and liability on said bond; which said judgment still remains in full force and effect and not in the least reversed or
 6 made void, and was not appealed from. A duly certified copy of the said bond sued on is filed herewith and made part hereof.

And this defendant, Blagden, pleads said judgment in bar of plaintiff's action against him.

Wherefore he demands judgment.

WILLIAM STONE ABERT AND
 R. ROSS PERRY,

Attorneys for the Defendant Blagden.

DISTRICT OF COLUMBIA, ss:

William Stone Abert makes oath and says that he is attorney of record of the defendant, Thomas Blagden, who is absent from the District of Columbia, and that the plea hereto annexed is true in substance and fact.

WILLIAM STONE ABERT.

Subscribed and sworn to by said William Stone Abert before me
this 5th day of November, 1900.

J. R. YOUNG, *Clerk*,
By R. J. MEIGS, JR., *Ass't Clerk*.

7

Bond Sued on.

Filed January 11, 1901.

In the Supreme Court of the District of Columbia, Holding a Special
Term for Orphans' Court Business.

DISTRICT OF COLUMBIA, *To wit:*

Know all men by these presents that we, John Taylor, Thomas Blagden, and George W. White, of the District of Columbia aforesaid, are held and firmly bound unto the United States of America in the full sum of fifteen thousand dollars, current money of said States, to be paid to the said United States, their certain attorneys or assigns; to which payment, well and truly to be made, we bind ourselves and each of us, our and each of our heirs, executors, and administrators, in and for the whole, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 19th day of March, in the year of our Lord one thousand eight hundred and ninety-seven.

Whereas the above-bounden John Taylor is about taking out from the supreme court of the District of Columbia letters testamentary on the personal estate of James Taylor, late of the District of Columbia, deceased:

The condition of the above obligation is such that if the above-bounden John Taylor shall well and truly perform the office of executor of James Taylor, late of the District of Columbia, deceased, according to law, and shall in all respects discharge the duty of him required by law as executor aforesaid, without any injury or dam-

8 age to any person interested in the faithful performance of
the said office, then the above obligation shall be void; it is
otherwise to be in full force and virtue in law.

JOHN TAYLOR. [SEAL.]
THOS. BLAGDEN. [SEAL.]
GEO. W. WHITE. [SEAL.]

Signed, sealed, and delivered in the presence of—
A. S. HARKNESS.

Approved:
A. B. HAGNER.

DISTRICT OF COLUMBIA, *To wit:*

I, John Taylor, do swear that I will well and truly administer the goods, chattels, personal estate, and credits of James Taylor, late of the District of Columbia, deceased, to the best of my knowledge, according to law, and will give a just account of my administration when thereto I shall be lawfully called, so help me God.

JOHN TAYLOR.

Sworn and subscribed before me this 19th day of March, A. D. 1897.

Test:

J. NOTA MCGILL,
Register of Wills.

9 Supreme Court of the District of Columbia, Holding a Special Term for Orphans' Court Business.

(Stamp.)

OFFICE OF THE REGISTER OF WILLS.

DISTRICT OF COLUMBIA, *To wit:*

I hereby certify that the foregoing is a true copy of the original bond in the estate of James Taylor, deceased, filed and recorded in the office of the register of wills for the District of Columbia.

[SEAL.] Witness my hand and the seal of the supreme court of the District of Columbia, special term for orphans' court business, this 10th day of January, A. D. 1901.

JOHN R. ROUZER,
Acting Register of Wills, District of Columbia.

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Demurrer to Plea.

Filed January 23, 1901.

In the Supreme Court of the District of Columbia.

THE UNITED STATES OF AMERICA to the Use
of Eugene R. Preinkert *et al.*, Plaintiff,

vs.

JOHN TAYLOR, THOMAS BLAGDEN, and GEORGE
W. White, Defendants.

At Law. #43551,
Doc. 47.

Now comes the plaintiff and says that the "plea after last continuance" of the defendant Thomas Blagden is bad in substance.

BARNARD & JOHNSON,
Attorneys for Plaintiff.

NOTE.—One of the matters of law intended to be argued at the hearing of the foregoing demurrer is that the entry of judgment against one of joint and several contractors is no bar to a subsequent judgment against another or others in the same suit.

To R. Ross Perry & Son and Wm. Stone Abert, Esq.:

Please take notice that we shall call the foregoing demurrer to the attention of the court (Mr. Justice Cole, in criminal court No. 2) on Friday next, January 25th, 1901, at the opening of the court or so soon thereafter as counsel can be heard.

BARNARD & JOHNSON,
Attorneys for Plaintiff.

11 Service acknowledged and copy left with us this 22nd day of January, A. D. 1901.

WM. STONE ABERT &
R. ROSS PERRY,
Attorneys for Defendant Thomas Blagden.

Supreme Court of the District of Columbia.

FRIDAY, *February* 15, 1901.

Session resumed pursuant to adjournment, Chief Justice Bingham presiding.

* * * * *

By Justice Cole, Criminal Court No. 2.

UNITED STATES to Use of EUGENE R. PREINKERT <i>et al.</i> , Plaintiffs,	} At Law. No. 43551.
<i>vs.</i>	
JOHN TAYLOR ET AL., Defendants.	

Upon hearing the demurrers of the plaintiffs to the pleas after the last continuance of the defendants Thomas Blagden and George W. White, it is considered that said demurrers be, and the same are hereby, sustained.

12 *Order Allowing Special Appeal.*

Filed March 5, 1901.

In the Court of Appeals of the District of *January*, January Term, 1901.

THOMAS BLAGDEN, Petitioner,	} No. 88, Original Docket. Law, No. 43551.
<i>vs.</i>	
THE UNITED STATES OF AMERICA for the Use of Eugene L. Preinkert, John L. Preinkert, Infants, by Job Barnard, Their Guardian, and Charlotte I. Preinkert, Clara E. Preinkert, Infants, by Charlotte Preinkert, Their Guardian.	

Petition for allowance of a special appeal.

On consideration of the petition for the allowance of a special appeal from an order of the supreme court of the District of Columbia, entered herein on the 15th day of February, A. D. 1901, it is now

here ordered by the court that said appeal be, and the same is hereby, allowed, with leave to sever from the other defendants.

[SEAL.]

M. F. MORRIS,
SETH SHEPARD,
Associate Justices.

March 1, 1901.

A true copy.

Test: ROBERT WILLETT, *Clerk.*

13

Order for Citation.

Filed March 5, 1901.

In the Supreme Court of the District of Columbia, the Fifth (5) Day of March, 1901.

<p>THE UNITED STATES OF AMERICA for the Use of Eugene R. Preinkert, John L. Preinkert, Infants, by Job Barnard, Their Guardian, and Charlotte I. Preinkert, Clara E. Preinkert, Infants, by Charlotte Preinkert, Their Guardian, Plaintiffs,</p> <p style="text-align: center;"><i>vs.</i></p> <p>JOHN TAYLOR, THOMAS BLAGDEN, and GEORGE W. White, Defendants.</p>	}	<p>At Law. No. 43551.</p>
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The clerk of said court will please enter an appeal to the Court of Appeals of the District of Columbia on behalf of said Thomas Blagden from an order of said supreme court entered herein on the 15th day of February, A. D. 1901, and issue citation to the above-named plaintiff. A special appeal from said order was allowed by said Court of Appeals to said Blagden on March 1, 1901, with leave to sever from the other defendants.

WILLIAM STONE ABERT,
Attorney for Defendant Thomas Blagden.

14

In the Supreme Court of the District of Columbia.

<p>THE UNITED STATES OF AMERICA for the Use of Eugene R. Preinkert <i>et al.</i></p> <p style="text-align: center;"><i>vs.</i></p> <p>JOHN TAYLOR ET AL.</p>	}	<p>At Law. No. 43551.</p>
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The President of the United States to The United States of America to use of Eugene R. Preinkert, John L. Preinkert, infants, by Job Barnard, their guardian, and Charlotte I. Preinkert, Clara E. Preinkert, infants, by Charlotte Preinkert, their guardian, Greeting:

You are hereby cited and admonished to be and appear at a Court of Appeals of the District of Columbia, upon the docketing the cause therein under and as directed by the rules of said court,

pursuant to an appeal allowed by the Court of Appeals of the District of Columbia on the 1st day of March, 1901, wherein Thomas Blagden is appellant and you are appellees, to show cause, if any there be, why the judgment rendered against the said appellant should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Edward F. Bingham, chief justice of the supreme court of the District of Columbia, this 5th day of March, in the year of our Lord one thousand nine hundred and one (1901).

JOHN R. YOUNG, *Clerk.*

Service of the above citation accepted this 5th day of March, 1901.

BARNARD & JOHNSON,
Attorney- for Appellee.

15 Supreme Court of the District of Columbia.

TUESDAY, *March 5, 1901.*

Session resumed pursuant to adjournment, Chief Justice Bingham presiding.

* * * * *

The following cases were certified to Justice Cole:

* * * * *

UNITED STATES to Use of EUGENE R. PREIN-	}	At Law. No. 43551.
kert, Plaintiffs,		
vs.		
THOMAS BLAGDEN ET AL., Defendants.		

Upon motion, it is considered that the bond on appeal of the defendant Thomas Blagden be, and the same is hereby, fixed in the penalty of one hundred dollars, or in lieu of such bond the defendant have leave to deposit with the clerk the sum of fifty dollars.

Memorandum.

March 5, 1901.—\$50 deposited by defendant in lieu of appeal bond.

Order for Transcript.

Filed March 15, 1901.

In the Supreme Court of the District of Columbia.

THE UNITED STATES OF AMERICA for the Use
of Eugene R. Preinkert, John L. Preinkert,
Infants, by Job Barnard, Their Guardian,
and Charlotte I. Preinkert, Clara E. Prein-
kert, Infants, by Charlotte Preinkert, Their
Guardian, Plaintiffs,

vs.

JOHN TAYLOR, THOMAS BLAGDEN, and GEORGE
W. White, Defendants.

At Law. No. 43551,
Doc. 47.

Order for transcript of record for the Court of Appeals of the Dis-
trict of Columbia.

The clerk will please make out record for the said Court of Ap-
peals in the above-entitled cause and include in the transcript the
following, viz:

1. The plaintiff's declaration.
 2. The judgment in favor of plaintiff against the defendant John
Taylor, rendered February 20, 1900.
 - 17 3. The special plea of *res judicata* of the defendant Thomas
Blagden, filed November 5, 1900.
 4. The certified copy of the bond filed by said Blagden as part of
his said plea.
 5. The demurrer of plaintiff, filed January 23, 1901, to the said
plea of said Blagden.
 6. The order of the court, passed February 15, 1901, sustaining
the said demurrer of plaintiff to said plea of said Blagden.
 7. The order of the said Court of Appeals allowing a special ap-
peal and severance herein to the defendant Blagden.
 8. The entry of appeal of said Blagden to said Court of Appeals
and order for citation to the appellee.
 9. The citation and acceptance of service thereof in behalf of ap-
pellee.
 10. The order of this court fixing appeal bond or deposit of \$50
in lieu thereof.
 11. The entry March 5th, 1901, showing the deposit herein of \$50
by said Thomas Blagden in lieu of appeal bond.
- March 15, 1901.

WILLIAM STONE ABERT,
Attorney for Thomas Blagden, Defendant and Appellant.

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Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA, }
District of Columbia, } ss :

I, John R. Young, clerk of the supreme court of the District of Columbia, hereby certify the foregoing pages, numbered from 1 to 17, inclusive, to be a true and correct transcript of the record, as per directions of counsel herein filed, copy of which is made part of this record, in cause No. 43551, at law, wherein The United States of America to the use of Eugene R. Preinkert *et al.* are plaintiffs and John Taylor *et al.* are defendants, as the same remains upon the files and of record in said court.

In testimony whereof I hereunto subscribe
Seal Supreme Court my name and affix the seal of said court, at
of the District of the city of Washington, this 26 day of March,
Columbia. A. D. 1901.

JOHN R. YOUNG, *Clerk.*

Endorsed on cover: District of Columbia supreme court. No. 1085. Thomas Blagden, appellant, *vs.* The United States of America to use of Eugene R. Preinkert *et al.* Court of Appeals, District of Columbia. Filed Apr. 15, 1901. Robert Willett, clerk.